

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 26 8 49 AM '93

DISPATCHED BY
In the Matter of

MM Docket No. 93-204

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Provincetown, Massachusetts)

RM-8266

NOTICE OF PROPOSED RULE MAKING

Adopted: June 28, 1993;

Released: July 21, 1993

Comment Date: September 13, 1993

Reply Comment Date: September 28, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Lower Cape Communications, Inc. ("petitioner"), requesting the substitution of Channel 221A for noncommercial Channel *220A at Provincetown, Massachusetts.¹ Petitioner also requests modification of its license for Station WOMR, Channel *220A, to specify operation on Channel 221A and that the Channel be reserved for noncommercial educational use.

2. In support of its request, petitioner contends that substitution of Channel 221A for Channel *220A at Provincetown would allow it to operate as a six kilowatt facility. According to petitioner, Provincetown is located on the outer edge of the 47 dBu service contour of Channel 6 Television Station WLNE, New Bedford, Massachusetts. Because of the location, petitioner states that Station WOMR is precluded by the provisions of Section 73.525 of the rules from operating on Channel *220 with full Class A facilities using a non-directional circularly polarized antenna. Petitioner further states that Station WOMR is required to protect co-channel Television Station WUMB, Boston, Massachusetts, against interference and is, therefore, limited on Channel *220A to a non-directional power of approximately 1.0 kilowatt from an antenna 100 meters above average terrain. Although petitioner indicates that removal of Channel *220A at Provincetown would have no preclusionary effect on Channels 218, 219 and 220, it did not provide any information to support this statement and should do so in its comments.

¹ Although petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that

3. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial educational band are not available because of foreign allotments (Canadian or Mexican) or potential interference to operation on VHF Television Channel 6. Here, potential interference to Station WLNE, New Bedford, Massachusetts, and Station WUMB, Boston, Massachusetts, appears to justify the reservation of a channel in the nonreserved band (Channels 221-300) for noncommercial educational use. The allotment and reservation of a commercial channel appears to be the only way to provide a full class A noncommercial educational channel to Provincetown. A Commission engineering analysis indicates, however, that Channel 221A is the only channel that can be allotted to Provincetown.

4. We believe the public interest would be served by proposing to substitute Channel *221A for Channel *220A at Provincetown, Massachusetts, and to reserve the channel for noncommercial educational use. See *Rochester, Minnesota, and Clear Lake and Osage, Iowa*, 7 FCC Rcd (1992). The channel can be allotted to Provincetown in compliance with the Commission's minimum distance separation requirements at petitioner's proposed site.² Channel *221A at Provincetown is short spaced to the site proposed by the University of Massachusetts ("University") in its application (File No. BPED-930114ML) for Channel *220A at Falmouth, Massachusetts. However, the University filed an amendment to its application requesting that the application be processed pursuant to Section 73.215 of the Rules which provides contour protection for short spaced allotments. A Commission engineering analysis indicates that assuming maximum Class A facilities for Station WOMR, Channel *221A, Provincetown, and actual facilities for the application for Channel *220A, Falmouth, the possibility of interference has been removed. We shall also propose to modify the license of Station WOMR, Channel *220A, to specify operation on Channel *221A in accordance with the Commission's Rules.

5. In view of the foregoing, we propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following community:

City	Channel No.	
	Present	Proposed
Provincetown, Massachusetts	*220A	*221A

6. IT IS ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Notice to the following:

their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

² The coordinates for Channel *221A at Provincetown are 42-03-54 and 70-09-34.

University of Massachusetts
100 Morrissey Blvd.
Boston, Massachusetts 02125

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 13, 1993**, and reply comments on or before **September 28, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Roger H. Strawbridge, President
Lower Cape Communications, Inc.
Radio Station WOMR
6 Orissa Drive, Box 606
East Orleans, Massachusetts 02643

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.